

General Terms And Conditions

S-Performance GmbH

§1 General

1. S-Performance GmbH (in the following referred to as seller) sells and delivers explicitly according to its enclosed sales- and delivery conditions. Our sales- and delivery conditions are considered as agreed when the customer places an order or accepts the delivery. We explicitly contradict any other General Terms and Conditions of Use by our customers. These are only valid when we explicitly agree to them in written form. Any declarations, agreements and deviating conditions from legal security reasons towards merchants are only valid when they are stipulated in written form.

2. These General Terms and Conditions come into effect on January 1st 2012 and are valid for all contracts that have been concluded and were implicated in accordance with these general terms and conditions after this date.

3. These general terms and conditions (AGB apply to corporations) exclusively. Corporations are natural or judicial persons or partnerships with legal capacity who act in behalf of their commercial or independent occupational function at contract execution. A customer who has initially entered a contractual relationship with us as an entrepreneur according to § 14 section 1 BGB (German Civil Code) has to inform us directly before concluding a new contract if he is no longer an entrepreneur according to § 14 section 1 BGB (German Civil Code) or if he does not wish to conclude the contract within his commercial or self-employed activity.

§2

Offer and conclusion of contract

1. Our written offers are subject to change. By sending price lists, catalogues, leaflets, etc to the customer, does not bind us to also deliver any goods.

2. The customer order is a binding offer. The seller can accept this offer according to his choice within two weeks by order confirmation or by sending out the ordered goods.

3. Marginal changes or deviations, especially those which do not affect the use, remain subject to changes. This also applies for the use of other materials. As far as errors occur in our catalogues, price lists, leaflets, offers, order forms, bills and other declarations which refer to minor quality-, amount- and weight tolerances, we are entitled for a correction and if necessary to an adjustment charge and/or credit note without any prior notice. The seller does not take over any responsibility for misprints.

§3

Delivery

1. We are entitled to partial deliveries to an extent not deemed unreasonable for the customer.

2. We can only guarantee the agreed delivery periods as long as the operating schedule remains undisturbed. Especially cases of force majeure and other interfering events at the side of the seller, his deliverers or its shipping partners, such as operational- or traffic failures, fire, floods, lack of employees, energy or commodities, strike, lock-out or administrative measures release the seller from a delivery on time and moreover entitle him to even cancel the delivery without compensation or subsequent delivery. Claim for damages deriving from postponed deliveries or delivery failures are, as far as they are not subject to a deliberate act or gross negligence, excluded. The purchaser is entitled to his legal right of withdrawal.

3. As far as the purchaser files for insolvency or settlement proceedings, or as far as he entered or issued a statutory declaration, occurring substantial payment difficulties or a change of ownership due to payment difficulties, entitle the seller to immediately withdraw from the delivery and to step back from the contract, except when the purchaser guarantees a deposit worth the purchasing in advance. If this guarantee is not given by the purchaser within a set period of two weeks, we are entitled to step back from the contract and can also cancel all future performance obligations.

4. The customer assumes the risk at the time the shipment has been surrendered to the transport contractor. If shipment is delayed upon the customer's request, the risk is assumed upon indicating the readiness for shipment.

§4

Warranty and claims

1. Warranty claims due to obvious failures have to be reported immediately, or at the latest within one calendar week after delivery to the seller in written form. Non-obvious defects must be reported immediately after occurrence. If this fails to take place, any claims referring to such faults are excluded. Sending in a written notice of defect is sufficient.

2. The warranty period is – as long as there is no other period stipulated for individual products – two years from the time of delivery as far as new goods are concerned and one year after the delivery of used products.

3. If the delivered goods are faulty, the seller is first entitled to send a replacement for the removal of defects or the faulty delivery. Only when this new delivery also fails twice or is unreasonable, the customer is entitled to either cancel the contract or ask for a price reduction. The seller is entitled to refrain from a replacement delivery if this involves disproportional costs.

4. The warranty expires under following circumstances:

- When goods are altered by a third party, processed or when faults were corrected without informing the seller, except the customer can prove that the failure can not be initially traced back to the alteration, processing or the failure itself.
- If the goods are fitted outside an authorised specialised dealer, except when the customer can prove that the failure can not be initially traced back to the assembly of the part.
- If legal or prescribed assembly and fitting instructions by our suppliers are not followed.
- If goods are fitted although it is obvious that they are faulty or incomplete or that the wrong product was delivered.

4. It is basically necessary to inform us about the return consignment beforehand. The seller provides you with an individual reference number which has to be placed on the outer consignment in a well legible and clear form. Warranty claims are hereby not affected hereby. The customer has to see to it that the product is appropriately wrapped. We cannot take responsibility for any damages which result from badly or insufficiently wrapped resent products. We cannot assume liability for transport damages resulting from insufficient packing. The seller organises a reshipment by its shipping company or the customer pays the shipping charges.

§5

Liability

Our liability – irrespective of the legal grounds – is limited to damages which can be assigned to us or our auxiliaries through deliberate act or gross negligence. Our liability and the liability of our legal representatives or auxiliaries does not include damages which result from slight negligence except when substantial contractual obligations are infringed or as far as any bodily injury or loss of life or health are concerned. In cases of slight negligence, our liability is limited to comparable damages which could have been expected at the time of the conclusion of the contract or at the latest at the time of the neglect of duty.

§6

Return of goods

1. Any return of goods not subject to warranty eligibility is subject to the agreement of the seller and has to take place within 12 months after the purchasing date. Except when the customer steps back from the contract effectively by following the here mentioned seller's general terms and conditions of use.

2. All returned goods have to be sent freight free back to us and have to carry an well legible and clear label with our reference number on the outer consignment. Warranty claims are hereby not affected hereby The shipment has to be entirely and sufficiently wrapped. After we checked the resent product according to its state and completeness, we can only reimburse goods which are free of defects. We then deduct 5% of the purchasing price as handling charge, but at least 10€ net for each article. If the before mentioned pre-requirements are not met, we either have the product repaired on your expenses or send it back to you on your expenses while stating reasons.

§7

Due diligence

It is the obligation of the customer to ensure that all alterations and adjustments at the vehicle meet the legal standards as far as this car is used for public road traffic. This includes that all alterations and refinements have to be added to the vehicle papers such as the registration document and the registration certificate. If necessary, the customer has to obtain the approval by the Technical Control Board (TÜV). It is the duty of the customer register the vehicle- or component part alteration with the Technical Control Board.

§8

Retention of title

The seller reserves the right to retain the property of the sold products, all fitted component parts and spare parts until they are fully paid for. If the customer is a merchant and buys the goods for his business activity, we reserve the right to retain the property of the products for all claims which the seller owns from any business transaction with the purchaser. Should the purchaser infringe any contractual conditions, especially fail to pay the ordered goods, the seller is entitled to cancel the contract and demand the goods back whose title he still holds.

The purchaser is allowed to further sell the goods in a regular business transaction. He already assigns to us all claims worth the invoice amount, generated by reselling the products to a third party. The purchaser is entitled – as long as he regularly settles all payments to claim the invoice amount in the name of the seller. If the direct debt authorisation is revoked, the customer has to inform the seller about all information necessary for direct debt authorisation and hand over the documents involved.

If the purchaser is a merchant and obtained the goods on the basis of retained title, then the seller is entitled to enter the premises of the customer and his representatives in order to check the documents needed for the assigned claims or to draw copies from these documents.

If the goods which are subject to a retention of title are sold with other goods not belonging to the seller or if they are billed together with other goods, then the seller is only entitled to the individual claimed amount including VAT which the customer charged from his own client. When writing a bill, the seller has to differ between goods which are subject to retention of title and other goods or services. If he fails to do so and only issues a bill with the overall amount, then this overall amount is assigned to the seller. The purchaser already now assigns all claims against his own client to the seller should the goods which are subject to retention get damaged. These claims are used as a guarantee for the seller. All regulations in this section also apply to the seller.

If the value of all securities exceeds the claims of the seller against the purchaser by more than 10%, then the purchaser has to issue securities on the seller's demand. If the customer himself sells the good subject to retention of title, then these goods are excluded from the assignment of security. Should these goods be seized, the purchaser has to notify us immediately. Any seizure or assignment of security of these goods to a third party is illegal without the consent of the seller.

§9

Prices and method of payment

New customers have to pay cash on delivery or make an advance payment as far as no other means of payment was arranged with the customer. The net purchasing prices "Netto EK" stated in the enclosed tables are net purchasing prices excluding VAT, supplemental charges, such as shipping cost, customs fees, insurance and packing costs. The selling price including VAT "VK inkl. MwSt." are nonbinding and recommended selling prices including VAT. The purchaser's pricing structure for sale s to the end user is at his discretion and not subject to the non-binding recommendations. If shipping costs apply as the purchaser wishes to have the goods shipped, he has to settle these costs. Bills have to be settled within one week after the goods were delivered or the invoice sent. The bills have to be settled without deduction. Any off-set of charges with contested counter claims is excluded. Should payment be delayed, then we charge default interest worth the actual interest, but at least 5% p.a. above the individual basic interest stipulated. It is left to the purchaser to provide a lower basic interest rate and it is left to the seller to provide a higher basic interest rate.

§10

Regulation on packaging

S-Performance GmbH hereby confirms that it fully meets its obligations according to the regulation on packaging according to the version of April 1st 2009. The company participates in an extensive system which focuses on taking back package material from private end customers (see. § 6 section 3 VerpackV – regulation on packaging). All package used for wrapping, shipping and selling is reported to our contract partner (system operator) who will then take care of the package material for S-Performance.

§11**Applicable law and legal venue**

1. For all legal disputes resulting from the contract between the seller and the customer or the seller and persons who do not have their legal residence within the Federal Republic of Germany, the legal value is the business location of the seller.

2. The legal relationship between the seller and the customer resulting from this contract are subject to the jurisdiction of the Federal Republic of Germany. The Uniform Law of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

§12**Effectiveness**

In the event that any of the provisions herein shall be deemed invalid, fully or in part, by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. Any provision which is invalid shall be replaced with a provision that best meets the intended purpose and meaning of the invalid provision.

S-Performance GmbH, Buxtehuder Str. 112b, D-21073 Hamburg
Phone +49 40 3999211-8, Fax +49 40 3999211-9
Email info@sachspperformance.com